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IN THE

Supreme Court of the United States

October Term, 1959.

No. 700.

TWO GUYS FROM HARRISON-ALLENTOWN, INC.,
Petitioner,

v.

PAUL A. McGINLEY, District Attorney, County of Lehigh, Pennsylvania, and GEORGE J. JOSEPH, District Attorney, County of Lehigh, Pennsylvania,
Respondents.

Petition for a Writ of Certiorari to the Court of Appeals for the Third Circuit.

PETITIONER'S REPLY BRIEF.

HAROLD E. KOHN,
WILLIAM T. COLEMAN, JR.,
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PAUL A. McGINLEY, DISTRICT ATTORNEY, COUNTY OF LEHIGH, PENNSYLVANIA, AND GEORGE J. JOSEPH, DISTRICT ATTORNEY, COUNTY OF LEHIGH, PENNSYLVANIA,
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PETITIONER'S REPLY BRIEF.

The increasing importance and use of the three-judge court procedure in the Federal Judicial system, and the desirability, from the point of view of the administration of justice, of definitive adjudication with regard to that procedure are illustrated by the recent decision of this Court in *Florida Lime & Avocado Growers, Inc. v. Jacobsen*, October Term, 1959, No. 49 (Decided March 7, 1960).

It is respectfully suggested that the procedure sought to be followed by petitioner in the present case would reconcile the positions of the majority and minority of the Court in the *Florida Lime* case. Mr. Justice Frankfurter's dissenting opinion states: "Neither my position nor the Court's is entirely satisfactory." The three-judge court would consider the issue as to whether the statute itself is constitutional, with an appeal on such issues going directly to the Supreme Court, while appendant issues would be considered either by the three-judge court or one member thereof, with the appeal on such issues going to the Court of Appeals.

This case is not moot, as appears from p. 2 of the Appellees' Brief in Opposition to the Motion to Affirm in the companion case, October Term, 1959, No. 699.

Moreover, if petitioner is correct on the jurisdictional question, the Court of Appeals, not this Court, should consider the question of mootness. And if it were moot, the procedure followed by respondents to bring the suggestion of mootness before this Court is inappropriate, and might lead to unanticipated issues of collateral estoppel at a later date in the still pending local court actions. Compare *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950), with *J. Aron & Company, Inc. v. Mississippi Shipping Co., Inc.*, October Term, 1959, No. 450, 4 L. ed. 2d 148 (November 23, 1959).

It is therefore respectfully submitted that the petition for writ of certiorari should be granted and the case be ordered for argument with Nos. 532 and 699.

Respectfully submitted,

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Dated: March 27, 1960.